

APPEAL NO. 022371
FILED OCTOBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 10, 2002, and on June 28, 2002. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of _____, does not extend to and include the cervical spine and depression in addition to the low back; that the claimant had disability from August 20, 1999, to February 10, 2000; and that the employer made a bona fide offer of employment and, as such, no temporary income benefits are due. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response, the respondent (carrier) argues that the hearing officer's decision and order have become final because the claimant's appeal is untimely.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169, because the claimant's appeal was not timely filed with the Texas Worker's Compensation Commission (Commission).

The applicable law governing this case, Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §143.3(c) (Rule 143.3(c)), requires that an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Section 410.202 was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. The hearing officer's decision was distributed on August 1, 2002. Pursuant to Rule 102.5(d), the claimant is deemed to have received this decision on August 6, 2002. In accordance with amended Section 410.202, the appeal was due on August 28, 2002.¹ The claimant mailed his appeal to the Commission on September 16, 2002, well after the 15-day deadline. Thus, the appeal is untimely and, by operation of Section 410.169, the hearing officer's decision has become final.

¹ The claimant alleges that he received the hearing officer's decision on September 1, 2002, a month after it was mailed. We note that September 1, 2002, was a Sunday, a day that mail is not delivered. In addition, we note that the hearing officer's decision was mailed to the claimant on August 1, 2002, at the same address that he listed as his return address on the envelope in which he mailed his appeal to the Commission.

The true corporate name of the insurance carrier is **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge